

*Copies of 13 emails from Marshfield residents  
were submitted to MassHousing with this letter*

## **GALVIN & GALVIN, PC**

**Attorneys and Counselors at Law**

*A Professional Corporation*

10 Enterprise Street, Suite 3  
Duxbury MA 02332-3315  
(corner of Rtes 3A & 139)

Robert W. Galvin, Esq.  
Robert E. Galvin, Esq.  
*William J. Galvin, Esq. (1898- d.1995)*

Tel: (781) 934-5678 / (781) 834-4224  
Facsimile: (781) 837-1030

July 1, 2016

**VIA EMAIL & OVERNIGHT DELIVERY**

Katharine Lacy, Mass Housing Monitoring and Permitting Specialist  
Comprehensive Permit Program  
Massachusetts Housing Finance Agency  
One Beacon Street  
Boston, Massachusetts 02108

Re: **RESPONSE OF THE TOWN OF MARSHFIELD**  
Modera Marshfield, MassHousing Project

Dear Ms. Lacy:

Please be advised that I am the duly appointed Town Counsel for the Town of Marshfield, Massachusetts.

On behalf of the Town of Marshfield Board of Selectmen (the "Board") and the Town of Marshfield (the "Town"), I would like to take this opportunity to provide MassHousing our comments on the proposed Modera Marshfield project proposed off of Commerce Way in Marshfield, Massachusetts.

Based on my review and the town's review of the Site Approval Application to the Massachusetts Housing Finance Agency (Mass Housing), the Modera Marshfield project proposed by Marshfield Mews, LLC, an affiliate of Mill Creek Residential involves the proposed construction of two hundred seventy (270) rental units on a parcel of land which we are informed contains approximately 22 acres of land. The proposed project involves the construction of three (3) four-story buildings and sixty (60) townhouse units and a five-thousand (5000) s.f. clubhouse building reportedly intending to serve as a fitness center, game area, leasing office and also an outdoor pool. There is parking proposed at the townhouse units and then large expanse of parking towards the State Highway

Route 3 side of the property with a total amount of parking spaces at five hundred forty-four (544). In accordance with Mass. Gen. L. c. 40B, sixty-eight (68) of the proposed rental units are intended to be restricted units for low and moderate income residents. The rental units, clubhouse, proposed wastewater treatment facility, pool storage building, maintenance shop, storm water facilities, the site access drives, parking areas and landscape all located off of Commerce Drive are sometimes hereinafter referenced collectively as the "Project".

Based on the application and a presentation to the town's Housing Partnership on June 21, 2016, the town is advised that there proposed 84 one-bedroom units (22 of which are proposed as affordable units), 148 two-bedroom units (37 of which are proposed as affordable units) and 38 three-bedroom units (9 of which are proposed as affordable units) and a net density of 14.05 units per acre.

The Project is located on Marshfield Assessor's Parcels: D08-01-06, D08-01-07, D08-01-08 and D08-01-10A and are located in the Town's Industrial-1 District and Planned Mixed-Use Development District (which is an overlay district).

Please be advised that the Board of Selectmen on behalf of the Town of Marshfield is opposed to the proposed project, as designed, since the plans and supporting data conclusively establish that (a) the site of the proposed Project is not appropriate for residential development of this size, scale and mass, (b) the conceptual Project design is inappropriate for the site on which it is located, taking into consideration the conceptual site plan, topography and environmental limitations; and, (c) the proposed Project is simply not financially feasible within the housing market in which it will be situated. The Town also wishes to identify a few inaccuracies with the application and some additional concerns about the project voiced by our residents to our public officials. The specific bases for Town's conclusions are set forth below.

#### **1. Background about the Town of Marshfield**

Marshfield is located approximately thirty miles southeast of Boston, twelve miles north of Plymouth, and sixty miles northeast of Providence, Rhode Island. The Town's land area is approximately 29 square miles, and is bounded by the towns of Norwell and Pembroke to the west, Scituate to the north, and Duxbury to the south. Marshfield's land uses are largely defined by its distinct water features, including the North and South Rivers, the Massachusetts Bay to the east, Green Harbor to the south, and the large number of fresh and saltwater wetlands that dot the Town's landscape. **Marshfield Master Plan (hereinafter "MP"), at p. 2-2.<sup>1</sup>**

Approximately sixty-five (65) percent of the Town's land area includes agriculture, forestry, recreational open space, and protected wetlands. About

---

<sup>1</sup> A complete copy of the 2015 Master Plan is included with this Letter.

one third (1/3<sup>rd</sup>) of Marshfield is residential land uses and three (3%) percent is commercial, industrial, and transportation-related. *Id.* (citations omitted.)

Residential development is largely focused within several neighborhoods being confined to areas that are developable because of the constraints posed by the large areas of saltwater and freshwater wetlands in Marshfield. In general, residential development in Marshfield is characterized by a more rural development pattern in the northern half of Marshfield and a denser development pattern along the Marshfield coast, the Downtown area, and southern half of Marshfield. Marshfield's primary residential neighborhoods include: North Marshfield, Marshfield Hills, Sea View, Green Harbor, Brant Rock, Ocean Bluff, Fieldston and Rexhame. *Id.* at 2-8 to 2-9.

In contrast, to the lower density development in the northerly area of North Marshfield and Marshfield Hills, there is very dense residential development in several multi-family communities located along Route 139 which passes through the center of Marshfield from State Highway Route 3. There also is very dense residential development located along Marshfield's coast with houses on small lots. *Id.* at 2-9. The Rexhame neighborhood near Rexhame Beach on the Humarock-Rexhame peninsula has large single-family homes on small lots (about 5,000 square feet in size). Just south of Rexhame, the Fieldston, Ocean Bluff and Brant Rock neighborhoods also consist of large to medium housing types on small lots along Ocean Street. As mentioned earlier in this chapter, this development pattern harkens back to the early 1920s when Marshfield encountered a building boom of seasonal cottages along its southeastern shoreline near the Town's beaches.

In all, there are six hundred eighty-three (683) acres of land in Marshfield or 3.7% of the town's land area used for higher density residential development and 1140 acres of land in Marshfield or 6.2% of the town's land area used for medium density development.<sup>2</sup> *Id.* at 2-11.

## **2. The Town's Affordable Housing and Housing Production Goals**

The Town is very fortunate to have both a Marshfield Housing Authority and an active Marshfield Housing Partnership who are in charge of implementing and maintaining an affordable housing program in the community. *MP* at 3-16.

The Housing Partnership which is supported by an annual appropriation at Town Meeting and with Community Preservation funds which are separately appropriated to support affordable housing.

---

<sup>2</sup> Higher Density Residential includes multi-family housing and housing with lots smaller than 1/4 acre. Medium Density is 1/4 to 1/2 acre lots.

The Marshfield Housing Partnership's current mission is to "identify the needs of residents for affordable housing and develop strategies that are consistent with other town priorities to meet these needs." Described in another way, Marshfield's general housing goal is to provide a variety of housing choices for current and future residents with price and affordability playing a significant role in achieving this objective. The Marshfield Housing Partnership has developed the Town of Marshfield Housing Production Plan, most recently updated in May 2014 from the 2009 Community Housing Plan. The Housing Production Plan has been officially approved by the Department of Housing and Community Development (DHCD).<sup>3</sup> MP at 3-1.

The Town of Marshfield's 2014 Housing Production Plan lists the following housing goals which are also goals within the Town's 2009 Housing Production Plan and the 2004 Community Housing Plan:

- To meet local housing needs by enhancing housing choices along the full range of incomes and to promote social and economic diversity and the stability of individuals and families living in Marshfield;
- To leverage other public and private resources to the greatest extent
- ~~Possible~~ that new housing creation is harmonious with the existing community; and,
- To surpass the 10 percent state standard for affordable housing.

As evidence of affordable housing opportunities in Town, the Master Plan notes roughly half of the condos that were sold in 2014 were priced within the means of those households earning at or below 80% of area median income, and these units represent opportunities within the town's homeownership market for starter households or first-time home buyers as well as seniors looking to downsize. Also the 1,384 rental units analyzed in the Master Plan, 203 units, or 14.7%, rented for less than \$750, documenting the existence of some affordable rental opportunities in Town. MP at 3-15.

In furtherance of the affordable housing objectives of the Town, in addition to maintaining affordable housing opportunities, the Marshfield Housing Partnership and Housing Authority offer the Marshfield Housing Opportunity Purchase Program (MHOPP), a financial assistance program for low-income first-time homebuyers to purchase single-family homes or condominiums in Marshfield. The program has been reportedly successful in creating affordable housing units out of existing stock by tying an Affordable Housing Restriction to the property deed in perpetuity and to date, Marshfield has developed 17 affordable units through the MHOPP program. Id.

The Town of Marshfield affordable housing has now reached 5.62% representing continued progress towards its goal of 10.00%.

### **3. The Development Plan and the Subject Property**

<sup>3</sup> A copy of the Town's Updated Housing Production Plan is attached hereto.

**a. The Project is proposed in the Industrial District of the Town of Marshfield where residential use is not permitted or compatible.**

The Project is located as indicated earlier in the Town of Marshfield's Industrial District 1 (I-1) and its Planned Mixed Use Development District (PMUD) and is accessed off a street known as Commerce Way that leads directly to Plain Street which is a state numbered route recently reconstructed and completed in 2015. This is functionally an industrial office park known in Marshfield and the South Shore as "Enterprise Park" connoting the desired use of the area.

The I-1 District contains approximately 420 acres of at the entrance to Marshfield on Route 139 and Route 3 and is intended primarily for industrial uses. The I-1 District allows manufacturing by special permit, as well as a variety of research offices, renewable energy research and development facilities, warehousing, and professional businesses and offices. Residential uses are not permitted in the district principally to protect the town's existing commercial and industrial owners and to provide them a place uniquely their own to engage in uses that are not generally compatible with residential uses.<sup>4</sup>

Furthermore whereas 96% of the town is currently zoned and used for residential purposes, it would seem particularly inappropriate to waste valuable industrial land for the residential use alone as proposed.

**b. The Project is also located in the PMUD in which such development is not permitted by right and will eliminate the ability of anyone else to propose residential use elsewhere in the PMUD.**

In 2003, the town adopted a Planned Mixed Use Development District (PMUD) at Annual Town Meeting. The purpose of the district Marshfield's PMUD ~~district~~ was to encourage mixed use development in the vicinity of the I-1 District on Route 139. The PMUD as originally constituted permitted a variety of uses including community facilities such as libraries, churches and parks but most uses are still only allowed by special permit including industrial, restaurants, retail, hospitals, ~~trade and distribution~~, and hotels. Only limited residential development was allowed in the form of age restricted adult developments (or senior communities) and the area within the district was virtually build out with that use.

---

<sup>4</sup> According the applicant's own application, to the west of the site is located a lot used for the storage of steel by J.F. Stearns and there are various other office and industrial uses in the general vicinity of the site including a radio station and its antennae, a local newspaper, surgical product manufacturer, an optical group, manufacturing, auto sales and a non-profit corporation.

The PMUD was recently expanded in size (210 Acres) and amended to allow residential and mixed uses (up to two stories of residential units above commercial), and to streamline the permitting process and now a portion of the land area formerly within the I-1 District is now situated within the PMUD, although the bylaw and its interpretation by the Planning Board favors the development of residential uses adjacent to the portion of the PMUD in residential use and on the opposite side of the development from the proposed Project.

The Project here conflicts in nearly every respect with the development scheme established by the Town of Marshfield in which the town favors industrial commercial tax base being developed and expanded. The further intrusion of residential development either on conventional basis or through the comprehensive permit statute and regulations substantially diminishes the marketability of the industrial park and the prospect for future industrial-commercial development consistent with the Master Plan of the town. Were this site to be eligible for development of this nature and type, it is most inevitably that residential uses will chase away industrial-commercial tax base and the users who need the space and buffer from residential uses.

In addition to the foregoing, were a residential project approved on the subject property within the PMUD, the ability to permit conventional permitting of residential uses elsewhere in the district, including where it would be appropriately away from the industrial commercial uses, will be permanently lost since only 22% of the 216.5 acres within the PMUD district can be used for residential use as a part of a mixed use development with a maximum number of residential units at 75. Accordingly, this project will absorb and greatly exceed by almost 200 units the number of permissible residential units.

**c. The Project is also located in the NHESP Estimated Habitats of Rare Wildlife and in the Priority Habitat of a Rare Species and development of the site is inconsistent with the Massachusetts Endangered Species Act (MESA) and its implementing regulations.**

In the section of its application addressing existing site conditions, Marshfield Mews, LLC, is asked to affirm whether there exists and to quantify the land area, if any, deemed to be endangered species habitat as per MESA. The applicant answered "zero" land area is included in any such area. The Town of Marshfield's Conservation Agent provided the attached Maps which are generated from the Mass GIS system and depict the entirety of the property which is proposed for development as being within NHESP Estimated Habitats of Rare Wildlife and NHESP Priority Habitat of Rare Species. The applicant's information is therefore false in this respect.

Under MESA, a Project resulting in a "Take" of state-listed rare species may be eligible for a Conservation and Management Permit (CMP) (321 CMR 10.23 ); however, to be eligible for a Permit, the applicant must first demonstrate that the project, as proposed, has avoided, minimized and mitigated impacts to State-listed Species consistent with the following performance standards:

1. The applicant has adequately assessed alternatives to both temporary and permanent impacts to State-listed Species;
2. An insignificant portion of the local population would be impacted by the Project or Activity, and;
3. The applicant agrees to carry out a conservation and management plan that provides a long-term "Net Benefit" to the conservation of the State-listed Species. The applicant may propose various options for "Net Benefit" which may include, but are not limited to, one or more of the following:

1. on or off-site permanent habitat protection;
2. management or restoration of state-listed species habitat; and/or,
3. conservation research designed to benefit the species affected by a given project.

Under 321 CMR 10.23, in determining the appropriate nature and scope of mitigation necessary to achieve the long-term "Net Benefit" performance standard, the following areal habitat mitigation ratios will generally apply, based on the category of State-listed Species:

Endangered Species: 1:3 (i.e., protection of three times the amount of areal habitat of the affected Endangered Species that is impacted by the Project or Activity);

Threatened Species: 1:2 (i.e., protection of two times the amount of areal habitat of the affected Threatened Species that is impacted by the Project or Activity).

Special Concern Species: 1:1.5 (i.e., protection of one and one half times the amount of areal habitat of the affected Species of Special Concern that is impacted by the Project or Activity).

In the earliest phases of the development of this easternmost portion of what is now the PMUD, the applicants were obligated to obtain a Conservation and Management Permit and to provide mitigation on-site to permit any development with the estimated and priority habitats. This applicant included the Town of Marshfield itself since the town was interested in allowing the development of a 10 acre Boys and Girls Club site off of Proprietors Drive and an additional 10-15 acres of playing fields off of Rockwood Road. The town assessed all of its land that was in open space and agreed to restrict previously

unprotected land with Conservation Restrictions to enable a state permit to issue and allow for modest development. In addition, the original subdivision plans incorporated features designed to improve and maintain the ability of the affected species to migrate and thrive in the entirety of the industrial park.

The applicant, Marshfield Mews, LLC., has yet to even acknowledge the existence of the habitat areas and/or to accommodate on-site or off-site the habitats. Whereas as much as 70% of the land area proposed for development could be impacted by the need to protect such species, the applicant's proposal cannot be logically pro-offered without the assessment of such impact.

**d. The Project located on the Southerly Side of Route 139 will necessarily increase the Traffic and Pedestrian Safety Hazards at Furnace Street and Rte 139.**

The Project is located off of Commerce Way on the southerly side of Rte 139 (Plain Street) which is an undivided four lane roadway running east and west. In addition to the travel lanes, there are two turning lanes in the east and westbound direction making a total of six lanes. On the northerly side of the Proprietors Drive egress to the site, there exists Furnace Brook Middle School, Marshfield High School and Martinson Elementary School campuses as well as the town's high school football field, community turf field, baseball and softball fields, basketball courts, tennis courts and several other multi-purpose grass fields used for youth sports including football, soccer, lacrosse and other sports. On the same side of the street, there exists the Boys and Girls Club. The addition of so many new residential dwelling units southerly of this intersection will create unacceptable traffic and pedestrian safety hazards far beyond the existing conditions.

There is no existing safe or convenient way to cross Rte 139 for the town's youth other than at the signalized intersections; however, even there due to the location of the access to the schools, the intersection cross-walks are ignored or are insufficient for the number of youth who cross the intersection. The addition of new families and new families with children yields in the view of the town the need to develop a permanent solution which could include a future pedestrian access footbridge to span Rte 139 to and from the school campuses and athletic fields.

Although Rte 139 was widened recently by MassDOT the type of development envisioned in the park did not include more than was permitted in a full-build condition and accordingly will require upgrades to prevent unacceptable delays along the two signalized intersections.



**4. Miscellaneous Critiques of the Application & Project**

In addition to the foregoing, there are significant environmental limitations on the site given the elevation and topography of the site and a project should not be designed to place the maximum potential number of units on a site.

The Town Planner, Greg Guimond, has spent a considerable amount of time reviewing the proposed Site Plan which is still very conceptual in nature.

As shown on the concept plans provided to the town, there are significant elevation changes necessitating substantial retaining walls behind the townhomes on the easterly portion of the site and also the holding back the earth from the foundations of the proposed four story apartment buildings. In addition, the townhomes are garage-under so the units are functionally three stories above the garage floor. Most importantly, the massing and scale of the proposed townhomes and four-story apartment buildings at and near the higher points of the property will undoubtedly loom both over the lower townhomes and feature prominently on the site in such a manner that they cannot be reasonably screened from view from Commerce Way and beyond to break the views. These quantity and height apartment buildings and townhomes do not exist anywhere in close proximity either alone or in combination with one another anywhere in town and are atypical of any development scheme even in the other apartment communities in Marshfield.

According to our Town Planner, were the applicant to eliminate development from the portion of the property which is located under high tension utility lines and away from the steep sloped areas of the property, the applicant could also conserve 6.9 acres of the property and with reduced scale locate a substantial but more reasonable project within the design scheme.

In the rear of the apartment community, there is a virtual sea of parking spaces one-quarter of which are by scale located some 300-340 feet from the closest residential units. The parking lot is shown without adequate breaks, landscape islands and a concentration of parking only seen at the largest supermarkets in the town of Marshfield.

Mr. Guimond is recommending that the applicant consider reducing the scope of the project and utilize the three story apartment building design proposed and constructed in Concord, Massachusetts and their two story townhome design from Newton, and altering the design to provide twenty (20) four-unit townhomes, thirty (30) six-unit townhomes, and ninety apartments in three buildings with parking concentrated in and around the apartment buildings all of which he opines is better in keeping with the character of the town of Marshfield. His proposed design scheme is attached hereto also.

Attached hereto are the further documents received from neighbors and abutters:

Email dated 6/27/16 from Douglas Wiley, 2 Weathervane Lane (traffic, school impacts, environmental impacts)

Letter dated June 27, 2016 from Gia Lane (traffic, issues with school capacity and redistricting, and density of development)

Email dated June 26, 2016 from Domenic (oppose overly dense development)

Email dated June 25, 2016 from Dale O'Reilly, 13 Seth Sprague Drive (traffic, pedestrian hazards, dumping site)

Email dated June 27, 2016 from Bonnie Bongiolatti, 9 Seth Sprague Drive (no additional traffic on Proprietor's Drive, school impacts)

Email dated June 24, 2016 from Hannah Mitchelson (school impacts, community safety)

Email dated June 24, 2016 from Suzanne Fuerschbach, 13 Red Pony Path (traffic and pedestrian safety, density and scale to large)

Email dated June 27, 2016 from Sheila and John Sullivan, 1 Weathervane Lane (impact on schools, public safety and traffic safety).

Email dated June 27, 2016 from Bill and Joanne Martin, 26 Seth Sprague Drive (traffic impacts, congestion and public safety on elder community)

Email dated June 27, 2016 from Priya McCue (school redistricting and impacts)

Email dated June 27, 2016 from Laurie Cutts, 41 Edmund Road (redistricting and school impacts, traffic congestion around schools)

Email dated June 27, 2016 from David Rodrigues, 21 Seth Sprague Drive (neighborhood congestion, traffic safety issues, pedestrians crossing Rte 139)

Email dated July 1, 2016 from Douglas Tocchio (project too large).

In closing, the Town of Marshfield is a community which considers its affordable housing needs and responsibilities seriously. As we have indicated before, there is no track record of denial of affordable housing projects or issuance of permits for housing with unreasonable conditions. This project, however, is inappropriately designed and located and as a consequence most likely have ardent opposition from local officials and an already vocal group of abutters whose comments are representative of a much larger opposition group.

Without substantial changes to the submission including a substantial reduction in the scale and size of the project, it is the position of the Town that MassHousing should reject the submission and not obligate the Town or its officials, boards and committees to spend scarce resources on a plan that cannot

receive the required findings. It is further the view of the town as espoused by the Selectmen that this site is not an appropriate site for such a large development, the Project will prevent any further development by anyone else in the PMUD, the Project is financially feasible at a significantly reduced size and scale and should be so constructed at a smaller scale, and that the Project is wholly inappropriate for this site in the Industrial (I-1 District) which is incompatible with residential use.

Thank you again for the opportunity to comment. We look forward to hearing from you on this issue. Should you have any further questions or concerns, please do not hesitate to contact my office.

  
Very truly yours,

Robert W. Galvin  
Marshfield Town Counsel

cc: Rocco Longo, Town Administrator